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28 **UNITED STATES DISTRICT COURT**
 NORTHERN DISTRICT OF CALIFORNIA

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16 JOSEPH P. CUVIELLO and DENIZ
17 BOLBOL, individually,

18 Plaintiffs

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20 v.
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22 ROWELL RANCH RODEO, INC., et al.,

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26
27
28 Defendants

Case No. 3:23-cv-01652-VC

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28 **PLAINTIFFS' MOTION *IN LIMINE***
 NO. 3 TO EXCLUDE EVIDENCE
 REGARDING THE
 CONSTITUTIONALITY OF
 DEFENDANTS' FREE SPEECH AREA

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28 Trial date: October 21, 2024
 Time: 10:00 a.m.
 Judge: Hon. Vince Chhabria
 Courtroom: 5, 17th Floor

1 **I. Introduction**

2 Plaintiffs seek to exclude any evidence, testimony, or opinions regarding the constitutionally
 3 of Defendants' Free Speech Area as applied during the events at Rowell Rodeo Ranch on May 20 -
 4 22, 2022. The Free Speech Area ("FSA") is a marked location for public speech required by lessor
 5 Defendant HARD for events, including at Rodeo Park events such as the one hosted by lessee
 6 Defendant Rowell Ranch Rodeo, Inc. It is undisputed by the parties the FSA at the Rodeo was
 7 unconstitutional. *See Order Granting in Part and Denying in Part Cross-Motions for Summary*
 8 *Judgment ("Order"). Dkt. 129, p. 1.* As noted by the Court, a remaining issue is whether
 9 Defendants' conduct toward Plaintiffs at the Rodeo event meets the requirements of a Bane Act
 10 claim. Cal. Civ. Code, § 52.1; *Id.* at pp. 2-3. By excluding evidence that the FSA was constitutional
 11 as-applied, the Court can focus on the required elements of the Bane Act claims, whether "the
 12 actions of the defendants constitute threats, intimidation, or coercion." Order, p. 3; Cal. Civ. Code,
 13 § 52.1(b); Order, p. 2. A Bane Act claim does not require a showing of animus or intent. *See* Cal.
 14 Civ. Code, § 52.1, Order, pp. 2-3. Accordingly, any testimony concerning whether the FSA was
 15 constitutional and Defendants were therefore justified in enforcing it, or potentially immune from
 16 liability, is therefore irrelevant to questions facing the trier of fact, more prejudicial than probative,
 17 likely to confuse the issues and mislead the jury, and a waste of this Court's time.

18 **II. Legal Standard**

19 Federal Rules of Evidence 401 and 402 prohibit the admission of evidence that does not tend
 20 to make any fact of consequence more or less likely. Rule 403 limits admissible evidence to
 21 relevant evidence, excluding otherwise relevant evidence if its probative value is substantially
 22 outweighed by the danger of, "unfair prejudice, confusing the issues, misleading the jury, undue
 23 delay, wasting time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403. District
 24 Courts have "broad discretion in deciding what evidence is relevant, reliable and helpful to the trier
 25 of fact." *Humetrix, Inc., v. Gemplus S.C.A.*, 268 F. 3d 910, 919 (9th Cir. 2001). Additionally, where
 26 the evidence is of slight probative value, "it's an abuse of discretion to admit it if there's even a

1 modest likelihood of unfair prejudice or a small risk of misleading the jury.” *United States v. Hitt*,
 2 981 F.2d 422, 424 (9th Cir. 1992).

3 **III. The Court should exclude evidence that the FSA was constitutional**

4 By precluding evidence concerning the constitutionality of the FSA, this Court can give
 5 effect to its Order in which it (1) held that the parties agree the FSA was unconstitutional and, (2)
 6 stated the need for a jury to determine whether Defendants’ actions constitute threats, coercion or
 7 intimidation under an objective test as required by the Bane Act. Order, pp. 2-3; Cal. Civ. Code, §
 8 52.1.

9 **A. The parties agree the FSA was unconstitutional**

10 Defendant HARD concedes that the FSA at the Rodeo on the date of the event was “an
 11 unreasonable time, place and manner restriction of free speech.” Dkt. 115, p. 1:24-26. Defendant
 12 HARD should therefore be prohibited from offering any information or opinion concerning the
 13 constitutionality of the FSA. Any such testimony would be misleading, and prejudicial to Plaintiffs
 14 who would then need to *again* set forth evidence of the unconstitutionality of the restriction.
 15 (Emphasis added); *See* Dkt. 84 (Plaintiffs’ Joint Motion for Partial Summary Judgment).
 16 Importantly, any evidence concerning the constitutionality of the FSA, set forth by any Defendants,
 17 would also be contrary to the Court’s findings that the parties agree the restriction was “too
 18 restrictive.” Order, p. 1 (“Plaintiffs refused [to move to the FSA], ‘which everyone now appears to
 19 agree was appropriate because the free speech area was too restrictive.’”) Defendants have not
 20 refuted the claim that the FSA was unconstitutional and any time spent on the issue of whether the
 21 FSA was a constitutional restriction would expand the case and potentially mislead the jury. Fed.
 22 R. Evid. 403. Additionally, whether the FSA was unconstitutional is a legal question, not
 23 appropriate for jury determination.

24 **B. Evidence that the FSA is constitutional as applied should be precluded
 25 because it is more prejudicial than probative**

26 Under Rule 403, the Court’s discretion to admit evidence of slight (if any) probative value,
 27 must consider if it would be an abuse of discretion to admit if when there is, “even a modest

1 likelihood of unfair prejudice or a small risk of misleading the jury.” *Hitt*, 981 F.2d. at 424.
 2 Plaintiffs’ Bane Act claims do not require a showing of animus, intent, or any state of mind on
 3 behalf of Defendants in acting to interfere or attempt to interfere with Plaintiffs’ constitutional
 4 rights. Cal. Civ. Code, § 52.1; *Austin B. v. Escondido Union School Dist.*, 149 Cal. App. 4th 860,
 5 883. For Plaintiffs to establish liability under the Bane Act, they must show “threats, intimidation,
 6 or coercion” carried out with the intent to interfere with the exercise or enjoyment of rights secured
 7 by the constitutions or laws of the state or the United States. Cal. Civ. Code, § 52.1. A defendant is
 8 liable under the Bane Act if they interfere with the plaintiff’s constitutional rights. *Austin B.*, 149
 9 Cal. App. 4th at 883.

10 If the Court permits Defendants to admit evidence or testimony that the FSA was
 11 constitutional as-applied to Plaintiffs at the Rodeo, Plaintiffs will be unfairly prejudiced. Fed. R.
 12 Evid 403. By opening up evidence to the constitutionality of the FSA, inferences that should not be
 13 drawn may be plausible. *See Hitt*, 981 F.2d at 424 (stating that admitted evidence by the trial court
 14 in that case was “fraught with the twin dangers of unfai[r] prejudice[e]... and misleading the
 15 jury.”). For instance, evidence that the FSA was a constitutional restriction at the Rodeo could
 16 lead the jury to draw a connection that Defendants’ actions, including threatening arrest and
 17 intimidating Plaintiffs, appear to be reasonable.

18 Additionally, unfair prejudice to Plaintiffs includes the fact that the parties have already
 19 determined that the FSA was unconstitutional. *See* Dkt. 115, p. 1:24-26 (HARD admits FSA was
 20 an unconstitutional restriction on speech); Fed. R. Evid. 403. Permitting evidence supporting the
 21 constitutionality of the FSA as-applied to Plaintiffs at the Rodeo will likely mislead the jury into
 22 believing Defendants’ state of mind, particularly as it relates to carrying out orders to enforce a
 23 “constitutional” FSA, is relevant to Plaintiffs’ Bane Act claims. As stated above, a defendant’s
 24 intent or state of mind is not a necessary element of a Bane Act claim. Cal. Civ. Code, § 52.1.
 25 According to Rule 403, any such evidence has minimal, if any, probative value that is substantially
 26 outweighed by the danger of unfair prejudice, confusing the issues, and misleading the jury. Fed.
 27 R. Evid. 403.

Further, evidence of the constitutionality of the FSA is not *relevant* because the Court has determined the parties agree the restriction was unconstitutional. (Emphasis added); Order, p. 1. Any additional evidence is not reliable or helpful because it does not have a tendency to make a fact of consequence more or less probable. Fed. R. Evid. 401. Again, evidence of state of mind or intent is not relevant to Plaintiffs' Bane Act claims. Cal. Civ. Code, § 52.1.

Finally, it is inefficient and wastes time to argue for the constitutional nature of the FSA. Fed. R. Evid. 403; *See* Dkt. 84, p. 15. In their Partial Motion for Summary Judgment, Plaintiffs argued effectively for the unconstitutional nature of the FSA as-applied to their leafletting and banner and poster-holding activity near the entrances to the Rodeo Park. *Id.* As detailed above, the parties agree the FSA was unconstitutional. *See* Section III.B. To permit evidence of the constitutionality of the FSA would require Plaintiffs to spend time and resources arguing (again) for the unconstitutionality of the restriction.

For these reasons, evidence or argument about the constitutionality of the FSA is therefore inadmissible under Rules 401, 402, and 403.

IV. Conclusion

For the foregoing reasons Plaintiffs respectfully request that this Court grant Plaintiffs' motion *in limine*.

Respectfully submitted,

DATED: September 10, 2024

/s/ Lily A. Rivo
Jessica Blome
Lily A. Rivo
GREENFIRE LAW, PC
Attorney for Plaintiff Deniz Bolbol

DATED: September 10, 2024

Joseph P. Cuvillo
JOSEPH P. CUVIELLO
Plaintiff In Pro Se

PROOF OF SERVICE

I am employed in the County of Alameda. My business address is 2748 Adeline Street, Suite A, Berkeley California 94703. I am over the age of 18 years and not a party to the above-entitled action. Document(s) served:

**PLAINTIFFS' MOTION IN LIMINE NO. 3 TO EXCLUDE EVIDENCE REGARDING THE
CONSTITUTIONALITY OF DEFENDANTS' FREE SPEECH AREA**

On September 10, 2024, I served the foregoing document(s) on the parties in this action, located on the attached service list as designated below:

- () By First Class Mail, Deposited the above documents in a sealed envelope with the where indicated: United States Postal Service, with the postage fully paid.

() By Personal Service: I personally delivered each in a sealed envelope to the office of the address on the date last written below.

() By Overnight Mail: I caused each to be placed in a sealed envelope and placed the same in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.

(X) By Electronic Transmission: Based on an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 20, 2024, in Berkeley, California.

Lily Rivo

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Sheriff Joshua Mayfield

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH P. CUVIELLO and DENIZ
BOLBOL, individually,

Plaintiffs.

V.

ROWELL RANCH RODEO, INC.;
HAYWARD AREA RECREATION AND
PARK DISTRICT; HAYWARD AREA
RECREATION AND PARK DISTRICT
PUBLIC SAFETY MANAGER/RANGER
KEVIN HART; ALAMEDA COUNTY
SHERIFF'S OFFICE; ALAMEDA COUNTY
DEPUTY SHERIFF JOSHUA MAYFIELD;
and DOES 1 and 2, in their individual and
official capacities, jointly and severally,

Defendants.

Case No. 3:23-cv-01652-VC

**DEFENDANT COUNTY OF
ALAMEDA'S OPPOSITION TO
PLAINTIFFS' MOTION *IN LIMINE*
NO. 3 TO EXCLUDE EVIDENCE
REGARDING THE
CONSTITUTIONALITY OF
DEFENDANTS' FREE SPEECH AREA**

Action Filed: April 6, 2023
Trial Date: October 21, 2024

I. INTRODUCTION

Defendants County of Alameda and Dep. Joshua Mayfield oppose plaintiffs' Motion in Limine No. 3 to Exclude Evidence Regarding the Constitutionality of Defendants' Free Speech Area ("Motion") because the requested relief is too broad and would exclude evidence directly relevant to Dep. Mayfield state of mind and thus of his specific intent to deprive plaintiffs of their

1 free speech rights – an element of plaintiffs’ Bane Act claim. This evidence is also directly
 2 relevant to countering plaintiffs’ claim that Dep. Mayfield worked “in concert” with HARD
 3 employee Gary Hart to enforce Rowell Ranch Rodeo’s Free Speech Area (“FSA”).

4 **II. DISCUSSION**

5 **A. The Scope of Plaintiffs’ Motion to Exclude**

6 The scope of plaintiffs’ motion is unclear. On the one hand, plaintiffs seek a broad order
 7 excluding evidence or argument “*regarding* the constitutionality of Defendants’ Free Speech
 8 Area.” (Plaintiffs’ MIL No.3 at 2:2-3; see also 5:13-14 [“evidence or argument about the
 9 constitutionality of the FSA”] [emphasis added].) Alternatively, and more restrictively, plaintiffs
 10 appear to be asking for a narrower order excluding evidence and argument “*that* the FSA was
 11 unconstitutional and Defendants were therefore *justified* in enforcing it, or potentially immune
 12 from liability” (Id. at 2:14-16; see also 5:6 [emphasis added].)

13 As an initial matter, the phrase “Defendants’ Free Speech Area” is not factually correct.
 14 The undisputed evidence is that the County was not involved in creation of the FSA for the
 15 rodeo; had no communications prior to the rodeo with HARD or Rowell Ranch Rodeo about the
 16 FSA; and had nothing to do with setting up the FSA or determining its location. Further, the
 17 undisputed evidence is that at no time did Dep. Mayfield require or even request plaintiffs to
 18 move to the FSA. Rather, during his very first encounter with plaintiffs minutes after arriving at
 19 the rodeo, he simply informed them that “There is a designated area for you guys.... If you guys
 20 go over there, great; if you chose to stay here, let’s just keep it peaceful.” (Audio Transcription of
 21 Body Cams at 7:3-8.) Dep. Mayfield never wavered from his position that the demonstrators
 22 needed to move to the FSA.

23 The Motion also incorrectly states that the County Defendants have conceded that the
 24 FSA was too restrictive and therefore unconstitutional. (Motion at 3:17-18 and 2:6-7.) The
 25 County does not, however, intend to argue that the FSA was in fact constitutional, if only for the
 26 reason that County had nothing to do with it and Dep. Mayfield never required plaintiffs to move

1 there. The County Defendants therefore do not need to argue that the FSA was constitutional or to
 2 “justify” their non-existent requirement that plaintiffs move there.

3 **B. The Relevance of the Proposed Excluded Evidence**

4 Evidence regarding the FSA’s constitutionality is, however, directly relevant to the
 5 County Defendants’ defense of plaintiffs’ Bane Act claim. As discussed in more detail in the
 6 County’s Opposition to Plaintiffs’ MIL No. 3, plaintiffs must establish that Dep. Mayfield had the
 7 specific intent to deprive them of their free speech rights. Accordingly, evidence of Dep.
 8 Mayfield’s mental state is a crucial part of plaintiffs’ Bane Act claim.

9 If asked, Dep. Mayfield would testify that as he drove onto the rodeo grounds, he
 10 observed the designated FSA. Based on his extensive training by the Sheriff’s Office on free
 11 speech issues in the context of handling nonviolent demonstrations, he believed that the FSA
 12 appeared to improperly located as it did not allow demonstrators the ability to talk to the patrons
 13 and hand out leaflets to them. The County does *not* intend to put this evidence before the jury to
 14 establish whether that the FSA was or was not constitutional. Evidence regarding the FSA
 15 (including evidence that could be construed as to whether it was in fact constitutional) is,
 16 however, directly relevant to Dep. Mayfield’s state of mind regarding his alleged specific intent
 17 to deprive plaintiffs of their free speech rights in any way. More specifically, this evidence also
 18 undermines plaintiffs’ claim that Dep. Mayfield required plaintiffs, using intimidation and
 19 coercion, including an alleged threat to arrest them, to move them to the FSA. It is absurd to think
 20 that Dep. Mayfield would arrest plaintiffs for not moving to the FSA which he himself believed
 21 *might* be unconstitutional. And finally, this evidence is relevant to counter plaintiffs’ claim that
 22 Dep. Mayfield acted “in concert” with HARD employee Gary Hart to require plaintiffs to move
 23 to the FSA (which plaintiffs claim HARD required of Rowell Ranch Rodeo). (See Second
 24 Amended Complaint at ¶¶ 44-46.) Again, Dep. Mayfield would not work “in concert” with Mr.
 25 Hart to move plaintiffs to a FSA which he believed was improper.

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1 **III. CONCLUSION**

2 The County defendants do not intend to argue one way or the other as to the
 3 constitutionality of the FSA. Evidence regarding the FSA (for example, its location and proximity
 4 to the rodeo patrons and the reasons why Dep. Mayfield believed it might be unconstitutional) is
 5 directly relevant to the County Defendants' defense against plaintiffs' Bane Act claim, which
 6 requires plaintiffs to establish Dep. Mayfield's specific intent to deprive plaintiff of their free
 7 speech rights, including but not limited his intent to require them to move to the FSA in concert
 8 with HARD to enforce Rowell Ranch's free speech policy for the rodeo. Accordingly, plaintiffs'
 9 motion to exclude this evidence should be denied.

10

11 Dated: September 17, 2024

FENNEMORE WENDEL

13 By:/s/ *Marc Brainich*

14 William B. Rowell
 15 Thiele R. Dunaway
 16 Marc Brainich
 17 Michele C. Kirrane
 18 Attorneys for Defendants
 19 County of Alameda and Alameda County
 20 Deputy Sheriff Joshua Mayfield

CERTIFICATE OF SERVICE

Joseph P. Cuvillo, et al. v. Rowell Ranch Rodeo, Inc., et al.
USDC – Northern District of California, Case No. 3:23-cv-01652-VC

I am a citizen of the United States and employed in Alameda County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1111 Broadway, 24th Floor, Oakland, California 94607.

On September 17, 2024, I served true copies of the following document(s) described as **DEFENDANT COUNTY OF ALAMEDA'S OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE NO. 3 TO EXCLUDE EVIDENCE REGARDING THE CONSTITUTIONALITY OF DEFENDANTS' FREE SPEECH AREA** on the interested parties in this action as follows:

Please see attached Service List.

BY EMAIL OR ELECTRONIC TRANSMISSION: By causing the document(s) listed above to be sent to the person(s) at the e-mail address(es) listed below. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on September 17, 2024, at Oakland, California.

/s/ Lena S. Mason

Lena S. Mason

SERVICE LIST

Joseph P. Cuvillo, et al. v. Rowell Ranch Rodeo, Inc., et al.
USDC – Northern District of California, Case No. 3:23-cv-01652-VC

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7 HAYWARD AREA RECREATION AND PARK
DISTRICT and KEVIN HART

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH P. CUVIELLO and DENIZ
BOLBOL, individually,

Plaintiff,

V.

ROWELL RANCH RODEO, INC.,
HAYWARD AREA RECREATION AND
PARK DISTRICT, HAYWARD AREA
RECREATION AND PARK DISTRICT
PUBLIC SAFETY MANAGER/RANGER
KEVIN HART, and DOES 1 and 2, in
their individually and official capacities,
jointly and severally,

Defendants.

Case No. 3:23-cv-01652-VC

**DEFENDANTS HAYWARD AREA
RECREATION AND PARK DISTRICT AND
KEVIN HARTS' OPPOSITION TO
PLAINTIFFS' MOTION IN LIMINE NO. 3 TO
EXCLUDE EVIDENCE REGARDING THE
CONSTITUTIONALITY OF DEFENDANTS'
FREE SPEECH AREA**

Trial: October 21, 2024

Hayward Area Recreation and Park District (“HARD”) and Kevin Hart join the County of Alameda’s Opposition to Motion in Limine No. 3 to Exclude Evidence Regarding the Constitutionality of Defendants’ Free Speech Area.

Defendants HARD and Mr. Hart oppose plaintiffs' Motion in Limine No. 3 to Exclude Evidence Regarding the Constitutionality of Defendants' Free Speech Area ("Motion") because the requested relief is too broad and would exclude evidence directly relevant to Mr. Hart's state of mind and thus of his specific intent to deprive plaintiffs of their free speech rights – an element of plaintiffs' Bane Act claim. This evidence is also directly relevant to countering plaintiffs'

1 claim that Mr. Hart worked “in concert” with County of Alameda Deputy Mayfield to enforce
2 Rowell Ranch Rodeo’s Free Speech Area (“FSA”).

3 HARD and Mr. Hart do not intend to argue one way or the other as to the constitutionality
4 of the FSA. Evidence regarding the FSA (for example, its location and proximity to the rodeo
5 patrons and the reasons why Mr. Hart believed it might be unconstitutional) is directly relevant to
6 HARD and Mr. Hart’s defense against plaintiffs’ Bane Act claim, which requires plaintiffs to
7 establish Mr. Hart’s specific intent to deprive plaintiff of their free speech rights, including but
8 not limited his intent to require them to move to the FSA in concert with the County deputies to
9 enforce Rowell Ranch’s free speech policy for the rodeo. Accordingly, plaintiffs’ motion to
10 exclude this evidence should be denied.

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Respectfully submitted,

13

Dated: September 17, 2024

ALLEN, GLAESSNER,
HAZELWOOD & WERTH, LLP

14

15

By: /s/ Nicholas D. Syren

16

DALE L. ALLEN, JR.

17

NICHOLAS D. SYREN

18

Attorneys for Defendants

19

HAYWARD AREA RECREATION AND

20

PARK DISTRICT and KEVIN HART

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1 CERTIFICATE OF SERVICE
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3 I am a resident of the State of California, over 18 years of age and not a party to the
 4 within action. I am employed in the County of San Francisco; my business address is: 180
 5 Montgomery Street, Suite 1200, San Francisco, CA 94104. On September 17, 2024, I served the
 6 within: **DEFENDANTS HAYWARD AREA RECREATION AND PARK DISTRICT AND**
KEVIN HARTS' OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE NO. 3 TO
EXCLUDE EVIDENCE REGARDING THE CONSTITUTIONALITY OF
DEFENDANTS' FREE SPEECH AREA on all parties in this action, as addressed below, by
 9 causing a true copy thereof to be distributed as follows:

10 SEE ATTACHED SERVICE LIST
11

- 12 **By United States Mail:** I enclosed the document in a sealed envelope or package addressed to
 13 the persons at the addresses listed above and placed the envelope/package for collection and mailing,
 14 following our ordinary business practices. I am readily familiar with this business's practice for
 15 collecting and processing documents for mailing. On the same day that the document is placed for
 16 collection and mailing, it is deposited in the ordinary course of business with the United States Postal
 Service, in a sealed envelope with postage fully prepaid. I am aware that on motion of the party served,
 service is presumed invalid if postal cancellation date or postage meter date is more than one day after
 the date of deposit for mailing an affidavit.

17 I am a resident or employed in the county where the mailing occurred. The envelope or package was
 18 placed in the mail at San Francisco, California.

- 19 **By Overnight Delivery:** I enclosed the document(s) in an envelope or package provided by an
 20 overnight delivery carrier and addressed to the persons listed above. I placed the envelope or package
 21 for collection and overnight delivery at an office or a regularly utilized drop box of the overnight
 delivery carrier.

- 22 **By E-Mail or Electronic Transmission:** Based on a court order or an agreement of the
 23 parties to accept service by email or electronic transmission, I caused the documents to be sent to the
 24 persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the
 25 transmission, any electronic message or other indication that the transmission was unsuccessful.

- 26 **(FEDERAL)** I declare under the laws of the United States of America that I am
 27 employed in the office of a member of the Bar of this court at whose direction the
 28 service was made and that the foregoing is true and correct.

29 Executed on September 17, 2024, at San Francisco, California.

30 

31 Danielle Costes

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